July 24 —

967

Map.

SUPREME COURT OF THE UNITED STATES.

No. ~~305~~. 192.126.

THE UNITED STATES, APPELLANTS,

vs.

ANASTACIO CARRILLO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 305.

THE UNITED STATES, APPELLANTS,

vs.

ANASTACIO CARRILLO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Transcript from land commission	1	1
Map	11	--
Notice of appeal to United States district court	31	12
Petition for review	32	12
Summons	39	15
Default of claimant	41	16
Answer of claimant	43	17
Motion to set aside default	45	18
Order to set aside default	45	18
Leave granted to take testimony	46	18
Notice of hearing	47	19
Motion for submission of cause overruled	48	19
Espediente	49	20
Do. (translation)	55	22
Submission of cause	59	23
Judgment rejecting claim	59	23
Motion and affidavit for new trial	60	24
Order granting new trial	62	24
Deposition of Rodriguez	63	25
Submission of cause	67	27
Judgment of confirmation	67	27
Decree of United States court	68	27
Motion for appeal	70	28
Order of appeal	71	29
Clerk's certificate	72	29

1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this seventeenth day of September, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Anastacio Carrillo, for the place named Cienequita, was presented, and ordered to be filed and docketed with No. 328, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *September 9th*, 1852.

In case No. 328, Anastacio Carrillo for the place called "Cienequita," the deposition of Pablo de la Guerra, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed, and is in the words and figures as follows, to wit:

(Vide page 3 of this transcript.)

LOS ANGELES, *September 28th*, 1852.

In case numbered 328 the counsel for the claimant filed the following motion, to wit:

2 Moved that case numbered 328 be placed on the trial docket; which motion was taken under advisement.

SAN FRANCISCO, *February 21st*, 1853.

Ordered, on motion of the United States associate law agent, that the following case placed on the trial docket, to wit, No. 328, Anastacio Carrillo for "Cienequita."

SAN FRANCISCO, *February* 28, 1853.

Case No. 328, Anastacio Carrillo for the place named "Cienequita," called the counsel for the claimant; Mr. Halleck read the petition and papers in evidence; the United States associate law agent filed his brief; case submitted, and taken under advisement by the board.

SAN FRANCISCO, *March 14th*, 1853.

In case No. 328, Anastacio Carrillo for the place named "Cienequita," Commissioner Harry J. Thornton delivered the opinion and the decree of final confirmation of this board.

Ordered, that the opinion and decree of final confirmation of this board, delivered this day in this case, be recorded on the journal.

Which opinion and decree are in the words and figures as follows, to wit:

(Vide page 22 of this transcript.)

Petition.

3 The petitioner, Anastacio Carrillo, respectfully shows, that on the 10th day of October, A. D. 1845, Pio Pico, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called "El parrajo de la Cienequita," in the present county of Santa Barbara, containing 400 varas square, a little more or less, as is more particularly described in the title; which with the map and act of possession are submitted herewith, marked "A," *both* translations marked "B."

That he has ever since been and now is in the occupation and possession of said tract of land; that he knows of no conflicting claims; that he relies for confirmation of title upon the original papers submitted herewith upon the minutes and records in the office of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the aforesaid tract of land.

By his attornies,

HALLECK, PEACHY & BILLINGS.

Filed in office September 17, 1852.
(Signed) GEORGE FISHER, *Sec'y.*

4 OFFICE OF CALIFORNIA LAND COMMISSION,
Los Angeles, September 9th, 1852.

On this day, before Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra, a witness produced in behalf of the claimant, Anastacio Carrillo, whose petition is No. 328 on the docket of the board, and was duly sworn, his evidence being given in English.

The law agent of the U. S. attended.

1st question. What is your name, age, and place of residence?

Answer. My name is Pablo de la Guerra; my age is about 32 years; I reside in Santa Barbara, and have lived in California all my life.

2d question. Examine the documents marked "A," and attached to this petition in this case, and say whether you know the signatures, and whether the documents are genuine?

Answer. I am acquainted with the signatures of Pio Pico, Jose Maria Covarrubias, Anastacio Carrillo, Raymundo Carrillo, Joaquin Carrillo,
Antonio Rodriguez, Miguel de la Guerra, and Antonio Jimeno;
5 their signatures to those ducuments are genuine, and the documents themselves are, to the best of my belief, *are* genuine.

3d question. What do you know about the possession of this land?

Answer. I know that the claimant, Anastacio Carrillo, has occupied this land since 1845 for his "matanzas," or killings; I do not know that he has used it for other purposes.

PABLO DE LA GUERRA.

U. S. law agent present.

Sworn to and subscribed before me this 9th of September, 1852.
HARRY J. THORNTON, *Com'r, &c.*

Filed in office September 9th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Document A.—Title, map, and possession.

7 1849.

Posecion Judicial en favor del Sor. D. Anastacio Carrillo de un solar de cuatro cientos varas en el Parage de la Cienequita.

8 Pio Pico. vocal decaño de la Asamblea Departamental y Gobernador Provicional de las Californias por Ministerio Constitucional:

Por cuanto Dn. Anastacio Carrillo ha pretendido para su benificio personal y el de su familia una suerte de tierra en los sienquitas immediatas á la mision de Santa Barbara, y que antes ocupó el finado Juan Pablo indigena de la espresada, practicadas previamente las averiguaciones necesarios, en uso de las facultades que me son conferidas á nombre de la nacion Mejicana, ha venido por decreto de este dia en concederle la espresada Suerte de Tierra, declarandola la propiedad de ella por las presentes letras, de conformidad con las la ley de 18 de Agosto de 1824, y reglamto. de 21 de Noviembre de 1828 y bajo las condiciones siguientes:

1°. La tierra de que se le hace donacion es de estencion de cuatro cientos varas en cuadro poco mas ó menos; podra cercarla sin perjudicar las trabesias, caminos y servidumbres, lo disfrutara libro y esclusivamente destinandala al uso y utilidad que mas le acomode; pero lo tendra cultivada para impedir el denuncio.

2°. No perjudicara en manera alguno á los indijenas de la mision de Santa Barbara que estan radicadas ó se radicaran en las Sienequitas, en el libro aprovechamiento del agua para el riego de sus siembras y suertes y demas usos que de alla puedan hacer.

9 3°. Solicitara del quez respectivo le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con las mejoneras necesarios.

En consequencia mando, que temendose al presente titulo por firme y valedero se tome razon de el en el libro respectivo, y se entregue al interesado para su resguardo, y demas fines.

Dado en la ciudad de Los Angeles en este papel comun por falta del sellado que corresponde á diez de Octubre de mil ochocientos cuarenta y cinco.

PIO PICO.

JOSE MARIA COVARRUBIAS, *Srio.*

Queda tomado razon de este titulo en el libro respectivo.
Angeles, fecha ut supra.

COVARRUBIAS.

10 [Here follows map, page 11.]

12 SEÑOR ALCALDE DEL PTO. DE STA. BARBARA: Anastacio Carrillo vecino y radicado en este punto ante la justificacion de V. como mejor haya lugar en derecho comparesco y dijo; que temendo concedidas cuatro cientos varas en cuadro en el terreno de las semiguitas inmediatas á la micion de Sta. Barbara, por titulo espreso del Gobierno del Departamto. fechado en diez de Octubre de mil ochocientos cuarenta y cinco el que debidamte. acompaño, suplico se sirba de dos me la posecion juridica del espresado terreno.

P. T. y en tal virtud espero de la justa integridad de V. (si la tiene á bien) haga efectiva esta *esta* mi solicitud de lo que recibira gracia y merced recibiendo esto en papel comun por no haber lo del sellado que corresponde.

Sta. Barbara, Agosto 2 de 1849.

ANASTO. CARRILLO.

STA. BARBARA, *Agosto de* 1849.

En virtud de la antecedente solicitud procedase por mi el presente Juez à la medicion señalamente de linderos y posecion judicial de las varas de terreno que solicita al interesado en este espediente con arreglo à los documentos ql. acompaña señalando pa verificarlo el dia seis del presente para lo ql. se citararan con valeto de comparendo
13 à los arrendatarios del establecim'to R. P. Ministro y Alcalde del mismo, aso Yo, el Juez de 1a. Ynstancia del Distrito de Sta. Barba. lo mandé decreté y firmé actuando por receptoria contestigos de asistencia por falta de Escribano Nacional y publico de ql. doy fé. RAYMDO. CARRILLO.

Assa :
J. CARRILLO.
Assa :
ANTONIO RODRIGUEZ.

En seguida y en presencia de mi el espresado Juez los medidores ql. lo fueron los indeginos Guillermo y Canuto, tomaron un cordel de Serda y con una vara de medir usual Mejicana midieron cincuenta varas para hacer la referida medicion enla fha. citada en el decreto anterior, y para ql. consti lo rubrique. (A flourish.)

En el paraje conocido con el nombre de la Cienequita a seis dias de Agosto del año del Señor mil ochocientos cuaranta y nueve, como a las tres de la tarde, Yo, el espresado Juez y presentes los Sors. ql. se citan en el decreto de esta misma fecha, para proceder á la medicion de tierra consedida por el Supr. Gobno. al Sr. D. Anastacio Carrillo segun el titulo ql. presenta cituada en la Orilla Norte del actual camino real ql. guia a Sta. Ynes y en linea recta con el resco ql. se halla hacin al Nordeste de la huerta del indio Benbinito se comenzo á tirar el cordel rumbo al noraeste y se midieron cuatro cordelles ql.
son doscientos varas las ql. remataron en el tope de una pe-
14 guina colina en donde se mando poner en majon. Desde este punto rumbo. Este cuanta el norte se midieron nueve cordeles ql. son cuatro cientos cincuenta varas, y tambien alli se ordeno la calocacion de un major, des de alli con el rumbo Nordeste se

medieron tres cordeles, ql. son ciento y cincuenta varas, è igualmente se deberá poner en dho. punto, otro majon, des de el cual y con rumbo Esurdeste, se midieron seis cordeles q. componen tres cientos varas y cuya medicion remató precisamente en el Camino real citado desde don de con rumbo Oeste cuarta al Sur siguiendo el dho. camino se medieron doce cordeles ql. son seis cientos, varas hasta don de por torcer el camino se torcio igualmente de rumbo para poder llegar al punto don de se comenzó la medicion del terreno, y asi poniendo alli su otro majon y con rumbo Sur Oeste se midieron tres cordeles ó ciento cincuenta varas rematando como se à dho. la medicion en el punto donde sé comenzo, formando en consecuencia el torreno cuya juridica posecion se confrere á D. Anastacio Carrillo, una figura irregular, de seis lados y conteniendo en calculo aproximativo una area de setenta y nueve mil y quementos varas cuadradas, advirtiendo a demas ql. los rumbos aqui disignados son los ql. demarca la ajuja, y no los verdaderos ó corregidos.

Y para constancia la firmé, por anto, siendo testigos presenciales de estos judicial posecion, D. Migl. de la Grra. y D. Rafael Leyba, y a mas los de mi asistencia ordinaria de ql. doy fé.

RAYMDO. CARRILLO.

Assista.:
J. CARRILLO.
MIGUEL DE LA GUERRA.
FR. ANTONIO JIMENO.
ANTONIO RODRIGUEZ.
RAFAEL LEYBA.

En el referido lugar de la Cienequita y en el mismo dia mes y año D. Anastacio Carrillo vecino de Sta. Barbara, acompañado del Alcalde 1n y testigos de asistencia de estos antos dijo, ql. habiendose medido la tierra ql. le corresponde segun consta en el anto anterior, tomaba y toma la verdadera y corporal posecion de dha. tierra medida pues le pertenece por justo titulo ql. obtiene de la concesion ql. de ella le hizo el Supo. Gobno. del Departamento entro y poseó pr. ella arranco llesbas, espacio punados de tierra rompeoramas de los arbales é iso otras demostraciones y actos de posecion en señal * * * * de la ql. dya tomaba de dha. tierra, y yo Dho Alcalde mando ql. desde entonces la tubieron y reconocieron por verdader señor y poseedor de ella.

De todo lo cual ó espresado, pidio, dho. D. Anastacio Carrillo, ql. para memoria en la benidero, y conservacion de sus derechos, le fuese entendido por mi el repetido Alcalde una constancia, y la firmo conmigo y los de mi asistencia de ql. doy fé.

RAYMDO. CARRILLO.

Assa.:
J. CARRILLO.
ANTONIO RODRIGUEZ.

16 Certificos en la posesn. que antecede y ql. presencio Como Ministro de estos neafitos, no fueron perjudicadas las huertas de los indijenos; y anuyl. la medica. se higo por donde pasan los regadios de las siembras y huertas del Oeste po. pr. la condica. 2a. del titulo de concesa. quedan asegurados los dhos. inds. del libre aprove chamto. del agua pa. el riego de sus siembras y huertas y demas usos ql. ella puedan hacer.

Sta. Barbara, fha. *ut supra.*

F. ANTONIO JIMENO.

Filed in office Sept. 9th, 1852.

GEO. FISHER, *Sec'y.*

18 *B.—Translation of title and possession.*

Pio Pico, senior member of the departmental assembly and ex officio provisional governor of the Californias.

Whereas Don Anastacio Carrillo has, for his own benefit and that of his family, asked for a piece (suerte) of land in the "Cienequitas," near the mission of Santa Barbara, which was formerly occupied by the deceased Indian, Juan Pablo, of the aforesaid mission; the necessary examinations being previously made, in use of the powers which are conferred on me in the name of the Mexican nation, I have by decree of this date granted him the aforesaid suerte of land, declaring to him the ownership of it by the present letters in conformity with the law of Augt. 18th, 1824, and regulation of Nov. 21, 1828, and under the following conditions:

1st. The land, of which donation is made, is of the extent of four hundred varas square, a little more or less. He may enclose it without prejudice to the crossings, roads, and servitudes; he may enjoy it freely and exclusively, making of it such use and benefit as may best suit him; but he will keep it cultivated to prevent its being denounced.

2d. He may not in any manner prejudice the Indians of the mission of Santa Barbara who are settled or may settle in the "Cienequitas" in the free benefit of the water for the irrigation of their plantings and garden lots and other uses which they may make of it.

3d. He shall request the proper magistrate to give him
19 juridical possession in virtue of the title, by whom the boundaries will be marked out with the necessary bounds.

In consequence I order that this present title, being held as firm and valid, note be made of it in the proper book, and it be delivered to the person interested, for his security and other purposes.

Given in the city of Los Angeles, on this common paper for want of the stamped, which corresponds, on the tenth of October, one thousand eight hundred and forty-five.

(Signed) PIO PICO.

(Signed) JOSE MA. COVARRUBIAS, *Sec'y.*

Note has been made of this title in the proper book.

(Sgd.) COVARRUBIAS.

Angeles, date as aforesaid.

To the alcalde of the port of Santa Barbara:

I, Anastacio Carrillo, a resident of and settled in this place, before your justification, as I best may in law, appear and say, that there having been granted to me four hundred varas square in the land of "las Cienequitas," near the mission of Santa Barbara, by express title of the government of the department, dated October 10th, 1845, which I duly transmit herewith, I request you will be pleased to give me the juridical possession of the aforesaid land.

20 Wherefore, and in virtue of the foregoing, I expect your just integrity (if you think it right) to comply with this my petition, of which I will receive grace and favor, receiving this on common paper for want of the corresponding stamped.

(Signed) ANASTACIO CARRILLO.

Santa Barbara, August 2d, 1849.

SANTA BARBARA, *August* 4, 1849.

In virtue of the foregoing request of the , I, present magistrate, will proceed to the measurement, designation of boundaries, and juridical possession of the varas of land which the person interested in this espediente asks for, in conformity with the documents which he transmitted, designating, for the purpose of verifying them, the sixth day of the present month; for which day, the lessees of the establishment, the rev. father minister and alcalde of the same, will be summoned in writing. Thus I, the judge of 1st instance of the district of Santa Barbara, ordered, decreed, and signed, acting in virtue of my office, with assisting witnesses, for want of a national and public notary, to which I certify.

(Signed) RAMUNDO CARRILLO.

Assisting witnesses:

(Signed) J. CARRILLO.

(Signed) ANTONIO RODRIGUEZ.

In continuation and before me, the said magistrate, the measurers, who were the Indians Guillermo and Canuto, took a hair-rope,

21 and with a common Mexican vara measured the measurements referred to in the date mentioned in the previous decree; and in testimony I signed in rubric.

(Rubric of Raymundo Carrillo.)

In the place known by the name of "La Cienequita," on the sixth day of August, in the year of our Lord one thousand eight hundred and forty-nine, about three o'clock in the afternoon, I, the aforesaid judge, the persons summoned in the decree of the same date being present, in order to proceed to the measurement of the land granted by the superior government to Don Anastacio Carrillo according to the title which he presents, situated on the northern margin of the present main road which goes to Santa Ynez, and in a right line with the fence which is on the northeast of the garden of the

Indian Benvenutas, the cordel was begun to be drawn northwest, and four cordels were measured, which are two hundred varas, the which ended on top of a little hill where a bound was ordered to be placed. From this point, course east quarter north, nine cordels were measured, which are four hundred and fifty varas, and there also a bound was ordered to be placed; thence course northeast, three cordels were measured, which are one hundred and fifty varas, in which point also a bound should be placed; from this point, and with course southeast, there were measured six cordels, that is, three hundred varas, which measurement ended exactly at the main road referred to; from which, with course west one quarter south, following
22 said road, twelve cordels were measured, which are six hundred varas, to a point where, as the road turned, the direction was also changed in order to arrive at the point where the measurement of the land was commenced, and so placing there another bound; and with course southwest, three cordels, or one hundred and fifty varas, were measured, the measurement ending, as has been said, in the point of beginning, the land of which juridical possession is given to Don Anastacio Carillo; forming, consequently, an irregular figure of six sides, containing, by an approximate calculation, an area of seventy-nine thousand five hundred square varas. Observing, also, that the courses here given are those shown by the needle—not the true or corrected—and in testimony I sign it officially, the witnesses being present of this juridical possession being Don Miguel de la Guerra and Don Rafael Leyba, and besides, those of my ordinary assistance, to which I certify.

(Signed) RAMUNDO CARRILLO.

Assisting witnesses:

(Signed) J. CARRILLO.
" ANTONIO RODRIGUEZ.
" MIGUEL DE LA GUERRA.
" RAFAEL LEYBA.
" F. ANTONIO JIMENO.

In the aforesaid place of La Cienequita, and on the same day, month, and year, Don Anastacio Carrillo, a resident of Santa
23 Barbara, accompanied by the 1st alcalde and witnesses of assistance of these acts, said that the land which corresponds to him having been measured, as appears by the foregoing act, he was taking and took the true and corporal possession of said land measured, as it belongs to him by just title, which he has by the grant of it made to him by the superior government of the department, he entered upon and walked over it, pulled up grass, scattered handsfull of earth, broke branches of trees, and made other demonstrations and acts of possession, in sign of that which he said was taking of said land; and I, said alcalde, ordered that from thenceforth he should be held and recognised as true owner and possessor of them.

Of all of which or the foregoing, said Don Anastacio Carrillo prayer that, for a future testimony, and the preservation of his rights, a tes-

timony should be issued to him by me, the aforesaid alcalde, and he signed it with me and of those of my assistance; to which I certify.

(Signed) RAMUNDO CARRILLO.

Assisting witnesses:

(Signed) J. CARRILLO.

(Signed) ANTONIO RODRIGUEZ.

I certify that on the preceding possession, which I witnessed as the minister of the neophyte, the gardens of the Indians were not prejudiced; and although the measurement was made where pass the waters for the sowing and gardens on the west, yet, by the 2d condition of the title of the grant, said Indians have insured to
24 them "the free benefit of the water for the irrigation of their plantings and garden lots, and other uses which they may make of it.

Santa Barbara, (date as above.)

(Signed) FRIAR ANTONIO JIMENO.

I certify the foregoing to be a true and correct translation from the original Spanish document, on file in this office, in case No. 328, Anastacio Carillo, annexed to the deposition of Pablo de la Guerra.

(Signed) GEO. FISHER, *Sec'y.*

Filed in office Sept. 7th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

25 *Opinion by H. J. Thornton.*

U. S. land commission for California; session at San Francisco.

ANASTACIO CARRILLO *vs.* THE UNITED STATES. } No. 328. Cienequitas.

This claim is founded upon a grant made by Governor Pio Pico, on the 18th of October, 1845, to the claimant, for a suerte or lot of ground four hundred varas square, a little more or less. The grant recites that the necessary examinations had been previously made, and in the name of the Mexican government declares the ownership in the grantee of the said ground in conformity with the decree of the 18th of August, 1824, and of the ordinance of the 21st November, 1828, of the Mexican nation. There does not appear to be any approval of the grant obtained by the governor from the departmental assembly, nor any official measurement and judicial possession had during the existence of the former government, which, however, did not continue for a year after the making of the grant. But the actual occupation and use of the said place are proved to have been enjoyed by the grantee from the date of the grant to the present time. The land is within the ten littoral leagues. All the objections to the confirmation of the claim have been considered and overruled by
26 this board in the case of Cruz Cervantes, and of others here-

tofore decided. The archives of the former government, according to the statement of their custodian, admitted as evidence in the case, show that such a grant was made; and although there has not been found an espediente of the title among them, yet the original grant is introduced and its genuineness fully established.

The only question of any consideration in this case, is that of the identification or segregation of the land from the remainder of the public domain. The identification must be ascertained by the grant itself, or be capable of being ascertained by extraneous testimony. (15 Peters, 215, &c.) The grant describes the land as a suerte or lot in the marshes contiguous to the mission of Santa Barbara, which was formerly occupied by the deceased Indian, Juan Pablo, of the aforesaid mission, and is for the quantity of four hundred varas square, a little more or less. The facts stated, if they exist, and be shown by proof, will lead to the place, so as to enable the surveyor general to locate it without any difficulty. It was so designated and platted off, as appears by the map in evidence; and although that was done subsequent to the change of government, yet as a measure of identifying the land granted, and as in connection with the possession of its segregation from the public domain, it may well be considered.

In the confirmation of this claim, it is necessary to determine whether the intention of the grantor was to convey a specific
27 lot or parcel of land, or merely to convey a given quantity at the place indicated. If a quantity merely, and not a specific and known piece of land as a unit was the subject of the grant, then the words a little more or less, according to our previous decisions, are mere redundant expressions on terms having no effect whatever, neither avoiding the grant for uncertainty, nor increasing or diminishing the quantity expressly named. In large rural grants, in a sparsely inhabited and wild country, where the quantity grantable is limited by law; where the map or deseño referred to in the grant is made by conjecture, without any survey, and more especially where there is an express reservation of the sobrante or overplus within the map which may result from the survey of the granted quantity, the construction above stated seems altogether reasonable. But when the grant is of a piece of ground in language embracing the whole of it, which is not wild land, but in the midst of a settlement, and which may be reasonably supposed to be known as containing a grantable quantity, then the words more or less are not insignificant, but apt and appropriate terms, implying, as they always do, except when overcome by circumstances which may be lawfully regarded, or, by counterbalancing terms, a grant of a specific tract or parcel of land. In the case now presented, I think the grant is of this specific character. It is of a small parcel contiguous to the mission of Santa Barbara, without the almost the universal reservation of a
28 sobrante; the place has been occupied in severalty before its grant; and, above all, the grant is of a suerte de tierra, which means a lot of ground already separated from others by its own boundaries, being synonomous with the agellas al alus distinctas of the Romans. The question is one of great interest, if of any at all,

to the parties in this case; for, if the grant be considered as one for the quantity of four hundred varas square, it must be of that quantity within the bounds of the place designated, if it contains so much; and since those boundaries appear not to contain the quantity of four hundred varas square, the result would be the same, no matter how the grant may be construed in this particular.

In accordance with the principles laid down for our government in the decision of the claim presented in the 11th section of the act of the 3d of March, 1851, this claim is valid, and ought to be confirmed.

HARRY J. THORNTON.

Decree.

29 This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid, therefore now proceed to make, and does hereby make, the following decree or report of final confirmation, viz:

It is decreed that the said claim be confirmed to the claimant to the suerte of ground described in the said grant, to the extent of the bounds thereof, being the same lot of ground of which the grantee has had possession ever since the date of, and under the said grant, with the express proviso nevertheless inserted herein, out of abundant caution, that the land hereby confirmed shall not, in any event, exceed the grantable quantity of eleven square leagues.

HILAND HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office March 14, 1853.
(Signed) GEO. FISHER, *Sec'y.*

30 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-five pages, numbered from 1 to 25, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 328, on the docket of the said board, wherein Anastacio Carrillo is claimant against the United States, for the place known by the name of Cienequita.

In testimony whereof I have hereunto set my hand and affixed my private seal (not having a seal of office) at San Francisco, [SEAL.] California, this twenty-first day of June, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

GEO. FISHER, *S'rio.*

Filed June 27, '54. A. S. TAYLOR, *Cl'k.*

Notice of appeal.

31 OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 11th September, 1854.

ANASTACIO CARRILLO,
vs.
THE UNITED STATES.

You will please take notice, that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of June, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed Nov. 7, 1854.

C. E. CARR, *Cl'k.*

Petition for review.

32 In the district court of the United States for the southern district of California, Los Angeles county.

ANASTACIO CARRILLO,
ads.
THE UNITED STATES. No. 328.

To the honorable Isaac S. K. Ogen, judge of the district court of the United States for the southern district of California:

The petition of Pacificus Ord, (of Monterey county,) attorney of the United States for the southern district of California, who petitions in this behalf for the United States, and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 17th day of September, A. D. 1852, Anastacio Carrillo presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, in the words and figures following, to wit: "The petitioner, Anastacio Carrillo, respectfully shows, that on the 10th day of October, A. D. 1845, Pio Pico, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called 'El Parage de la Cienequita,' in the present county of Santa Barbara, containing 400 varas square, a little more or less, as is more
33 particularly described in the title, which with the map and act of possession are submitted herewith, marked 'A,' with translations marked 'B;' that he has ever since, and now is in the occupation and possession of said tract of land; that he knows of no conflicting claims; that he relies for confirmation of title upon

the original papers submitted herewith, upon the minutes and records in the office of the surveyor general, and upon such other and further proofs as he may be advised are necessary. Wherefore he prays the commissioners to confirm to him the aforesaid tract of land."

Your petitioner further represents that thereafter, to wit, on the 14th day of March, A. D. 1853, the said commissioners confirmed by final decree the said claim of the said Anastacio Carrillo, in the words and figures following, to wit:

"This board, upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid, therefore we now proceed to make, and does hereby make, the following decree or report of final confirmation, viz: It is decreed that the said claim be confirmed to the claimant to the suerte of ground described in said grant, to the extent of the bounds thereof, being the same lot of ground of which the grantee has had possession ever since the date of, and under the said grant, with the express proviso nevertheless inserted herein, out of abundant caution, that the land hereby confirmed shall not in any event exceed the grantable quantity of eleven square leagues.

"(Signed) HILAND HALL,
HARRY J. THORNTON,
Commissioners.

"Filed in office March 4, 1853.

"(Signed) GEO. FISHER, *Sec'y.*"

34 That thereafter, to wit, on the 27th day of June, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded, in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 328, reference to which it is prayed may be had and made part of this petition.

That on the 30th day of June, A. D. 1854, the Honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said cause, (No. 328) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 7th day of November, A. D. 1854, the said Attorney General of the United States filed, or caused to be filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California, that the appeal in said cause of Anastacio Carrillo *vs.* the United States, from the decision of the said commissioners to ascertain and settle the private land claims in the State of California, in the district court of the United States for the southern district of California, would be prosecuted by the United States.

Your petitioner further represents that the said land claimed as aforesaid is within the jurisdiction of this honorable court.

And your petitioner further represents and insists that the said

35 decree of said commissioners is erroneous and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law, and evidence apparent in said certified transcript of said cause now on appeal from said commissioners to this honorable court.

And your petitioner further represents that the said claim is invalid and said decree erroneous, on the following grounds:

1. That the said Anastacio Carrillo shows no valid title to the said land claimed by him as aforesaid, and it is denied that he has any.

2. That the said alleged grant of Governor Pio Pico was made in violation of the 4th article of the colonization law of Mexico of the 18th of August, A. D. 1824, in this, that the land granted as alleged by claimant was within ten leagues of the sea coast, there being no evidence by claimant that the supreme general executive of Mexico previously approved of the colonization of the lands of California within ten leagues of the sea coast, and it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

3. That at the date of the said alleged grant, the said land claimed as aforesaid was occupied by the missions of California, and particularly by the mission of Santa Barbara, or the Indians of said mission.

4. That the said alleged grant has not the conditions required by law, and is not made in entire conformity with the law of Mexico of the 18th of August, A. D. 1824, and the regulations of the 21st of November, A. D. 1828.

36 5. That the said alleged grant of land claimed is not stamped paper; that it is not made subject to the approval of the territorial deputation or departmental assembly of California, as required by law; that it has not the conditions requiring the grantee to build a house and have it occupied, and to cultivate the said land within a proportionate time, as required by law; that there is no description in said grant of the said land by which it can be identified; that there is no map referred to in said grant to aid the description or identification of said land; that the said alleged grant of said land is void for uncertainty.

6. That there is no evidence of the approval by the territorial deputation or departmental assembly of California, of said grant of said land; and it is denied that there ever was any approval of said grant as required by law.

7. That the said alleged grant of Pio Pico of said date was not a definitive grant such as is required by law.

8. That the alleged act of juridical survey and possession of said land by Raymunda Carrillo, dated August the 6th, A. D. 1849, was made after the 7th of July, 1846, and after the change of sovereignty of the territory of California, and that said act was therefore void; that said act of survey and possession was not made in accordance to the ordinance or law; that it was not made according to the said grant of Pio Pico; that the said Raymunda Carrillo had no lawful authority to make a survey and give juridical possession of the said land until after the issuance by the governor of the definitive grant,

wherein it should be stated that the grant was made in exact conformity with the provisions of the law, and with the approval of
37 the deputation or departmental assembly of California; that the said survey and juridical possession of said land are vague and indefinite; that there is no evidence that the said Raymunda Carrillo was, at the date of the said act, (August the 6th, 1849,) a magistrate or first alcade of Santa Barbara, with lawful authority to make such survey and give juridical possession of said land; and it is denied that he was at said date a magistrate or first alcalde of Santa Barbara, and that he had lawful authority to perform such alleged judicial acts.

9. That there is no evidence that the map shown in the record is the original map belonging to the original espediente, or that it is an authentic copy thereof.

10. That there is no evidence that the said alleged grantee and claimant built a house on the said land within one year from the date of the said grant, and that it was occupied, and that the land was cultivated as required by law; and it is denied that he ever built a house on said land within a year from the date of said grant, and that it was occupied, and the land cultivated.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed and said claim rejected by said commissioners upon the grounds aforesaid.

Wherefore the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the
38 United States, by reason of the premises, and the laws and statutes in such case made and provided, prays that the said Anastacio Carrillo, or his attoruey, may be served with a copy of this petition, and that this honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Anastacio Carrillo for said land, claimed and affirmed as aforesaid, and that the same may be decreed invalid; and all such other orders, judgments, or decrees as may be just, with costs and general relief.

P. ORD,
Att'y of the U. S. for the southern dist. of California.

Filed Dec. 21, 1854.

C. E. CARR. *Clk.*

39 *Summons.*

UNITED STATES OF AMERICA,
Southern district of California, ss:

The President of the United States to Anastacio Carrillo, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against you in the district court of the United

States, in and for the southern district of California, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-four, at the city and county of Los Angeles, in said district, by Pacificus Ord, attorney of the United States for the southern district of California, in behalf of the United States, praying the said court to review, upon the grounds therein set forth, the decision of final confirmation of the commissieners to ascertain and settle the private land claims in the State of California, of the claim of Anastacio Carrillo for the tract of land called El Parage de la Cienequita, in the county of Santa Barbara, California, to the extent of about four hundred varas square, which said claim was presented by your petition to said commissioners on or about the 17th of September, A. D. 1852, and by them confirmed on or about the 14th of March, A. D. 1853, and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on yon in the county of Los Angeles; and within twenty days if served on you in the county of San Diego, or San Bernardino; and within
40 forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or that the plaintiff will apply to the court for the relief demanded therein.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, this second day of February, in the
[SEAL.] year of our Lord one thousand eight hundred and fifty-five, at Los Angeles aforesaid. C. E. CARR, *Clerk.*

Received February 2, 1855

EDWARD HUNTER,
U. S. marshal.

I served this summons, along with the proper copy of the petition, upon Anastacio Carrillo, the defendant, by delivering to him personally a true copy of the summons and petition, at the town of Santa Barbara, in the southern district of California, on the first day of March, A. D. 1855. EDWARD HUNTER,
U. S. marshal.
By R. S. JONES, *Deputy.*

Sworn to and subscribed before me this 10th of March, 1855.
C. E. CARR, *Clerk.*

Default of claimant.

41 Whereupon the following proceedings were had in open court, to wit:

In United States district court, southern district of Cal'a.—Adjourned term, April 9th, 1855.

LOS ANGELES, *April 11th*, 1855.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20.

And now comes the said appellant, by P. Ord, esq., attorney of

the United States, and the said appellee, being called, came not, but made default; wherefore, on motion of P. Ord, attorney as aforesaid, it is ordered by the court here, that judgment by default be herein entered against the said Anastacio Carrillo, and that the said appellant have and recover of and from the said appellee the sum of —— dollars, the costs in and about this suit expended; and that execution issue therefor.

Answer.

43 In the district court of the United States for the southern district of California, county of Los Angeles.

ANASTACIO CARRILLO, appellee, *ads.*
THE UNITED STATES, appellants. } No. 328.

The answer of Anastacio Carrillo to the petition of U. S. dist. attorney, respectfully shows:

That on the 10th of October, A. D. 1845, Pio Pico, governor of California, by virtue of authority in him vested, granted to the said Carrillo the tract of land called "El Parage de la Cienequita," being 400 varas square, a little more or less, situated in the present county of Santa Barbara, and the said Carrillo, on or about the 6th August, 1849, was put in possession of the said land by a duly authorized officer of the Mexican government, who marked out the boundaries of the same; that ever since the date of the aforesaid grant the said Carrillo has been and now is in the occupation and possession of the said land, and that he duly fulfilled all the conditions of the grant.

Wherefore he prays this honorable court to decide upon the validity of the said claim, and to confirm the same.

HALLECK, PEACHY & BILLINGS,
Attorneys for appellee.

April 19, 1855.

44 I served this answer upon P. Ord, U. S. district att'y in the southern district of Cal'a, by delivering to him in person a certified copy hereof this August 16th, 1855.

EDWARD HUNTER,
U. S. marshal.

Sworn to and subscribed before me this 16th day of August, 1855.
C. E. CARR, *Clk.*

Filed May 1st, 1855.

C. E. CARR, *Clk.*

Motion to set aside default.

45 In the United States district court for the southern district of California.

UNITED STATES
vs.
ANASTACIO CARRILLO.

And now comes the defendant and moves the court to set aside the default entered against him in this case, as improperly taken.

J. LANCASTER BRENT, *Att'y for def't.*

Filed June 12th, 1855.

C. E. CARR, *Clk.*

Order vacating default.

Whereupon the following proceedings were had in open court, to wit:

U. S. dist. court, south'n dist. of Cal'a.—Regular term, June, 1855.

MONTEREY, *June 12th*, 1855.

ANASTACIO CARRILLO, appellee,
vs.
THE UNITED STATES, appellant. } No. 20. Motion to set aside default.

And now comes the said appellee by his attorney, J. L. Brent, esq., and the United States by P. Ord, U. S. dist att'y, and the said appellee, by his attorney, moves the court to set aside the judgment by default in this case.

Whereupon the matters and things arising under said motion having been heard, and by the court here fully understood, it is ordered that said default be set aside.

Leave to take testimony.

46 U. S. dist. court, south'n dist. of California.—Regular June term, 1855.

MONTEREY, *June* 13, 1855.

ANASTACIO CARRILLO, appellee,
ads.
THE UNITED STATES, appellant. } No. 20.

And now come the parties in this case by their respective attorneys, and, on motion, it is ordered by the court here, that the several parties be granted leave to take such further testimony as they may desire upon giving reasonable notice to the opposite party.

United States district court, southern district of California.—Special term, Sept. 10, 1855.

LOS ANGELES, *October* 9, 1855.

ANASTACIO CARRILLO, appellee,
ads.
THE UNITED STATES, appellant. } No. 20.

On motion of counsel, it is ordered by the court that either party in this case have leave to take additional testimony.

47 *Notice of hearing.*

In the district court of the United States for the southern district of California.

ANASTACIO CARRILLO *ads.* THE UNITED STATES. } No. 20. Transcript, No. 328.

To Anastacio Carrillo or his attorney:

Take notice, that the above entitled cause will be brought to a hearing by the United States on Friday, the 19th of October, A. D. 1855, or as soon thereafter as the same can be heard by the court.

P. ORD, *U. S. dist. att'y.*

Los Angeles, October 13, 1855.

Filed, October 13, 1855.

C. E. CARR, *C'lk.*

48 *Motion for submission overruled.*

Whereupon the following proceedings were had, to wit, in open court:

United States district court, southern district of California.—Special term, September 10, 1855.

LOS ANGELES, *October* 19, 1855.

ANASTACIO CARRILLO, app'ee, *ads.* THE UNITED STATES, applt. } No. 20.

And now comes the United district attorney, and moves the court to receive as submitted, and for final adjudication before this court, this cause, in which notice of hearing has been duly given him under the rules of this court; and the matters and things arising under said motion having been heard, and by the court here fully understood, it is ordered that said motion be overruled.

United States district court, southern district California.—Special term, September 10, 1855.

DECEMBER 24, 1855.

ANASTACIO CARRILLO, app'ee, *ads.* THE UNITED STATES, applt. } No. 20.

This case was set for hearing, by consent of parties, on Friday next.

49 *Espediente.*

1845.

Espediente promovido por Dn. Anastacio Carrillo en pretencion de 400 varas de tierre en el paraje de Las Cienequitas. [475.]

ANGELES, *Setiembre de* 1845. Ynforme la comicion de Missiones.

PICO.

EXMO. SOR: Anastacio Carrillo alfse. retirado de la compania de Ste. Barbara ante la justificacio de V. E. como mejor halla lugar en derecho, comparece y dice, que hagandore una suerte de tierra disocupada como de cuatro cientos varas mas ó menos en el paraje conocido con el nombre de la Cienequita pr. haber muerto el dueño que la obtenia, con permiso del finado Comand'te General y Gefe Poltico Dn. Jose Figueroa desde el año treinta y cuatro que se secularizacion las Missiones, y que por el esponiente se les dio posecion á varios indiginos en iguales terminos, siendo Administrador de la inmediata Micion del Mismo nombre y que hoy disfrutan esclucibamente, solicita el que subscribe se V. E. lo tiene á bien, se le concedan los varas del tierra mencionada para salo el objeto de hacer anualm'te una costa Matanzas, y se puede una guerta para ortiliza y fruta temporal.

Por tanto A. V. E. vendedam'te suplico se le agracia con el solar indicado por tener la voluntad de susperederas y la de la majoria de los neofitos ql. halli existen y no pertenecer á Vecindad n Corporacion, dispenzando esta solicitud en papel comun por no haber en este lugar del sello que corresponde.

Sta. Barbara, Fbre. 14 de 1845.

ANAS'A CARRILLO.

EXMO. SOR.: La comision de Misiones tiene el honor de informar á V. que en su suiter puede beneficiar el Gobierno al que representa con el pequeño terreno que pretende, bajo la condicion que no perjudicará en el uso de las aguas á los indios que siembran en las Sienequitas.

Angeles, Setiembre 25 de 1845.

ANDRES PICO.
JUAN MANCO.

ANGELES, *Octubre* 10 *de* 1845.

Se conceda la tierra que se pretende. Estiendare el titulo respectivo.

Angeles, Noviembre.

Pio Pico, vocal decano de la Asamblea Departamental y Gobernador provisional de los Californias, por ministerio constitucional:

Por cuanto Don Anastacio Carrillo ha pretendido para su beneficio personal, y el de sa familia una suerte de tierra en las Sienequitas inmediatas a la Micion de Sta. Barbara que antes ocupó el finado. F. Indigena —— de la espresada, practicadas previamente las averigu-

aciones necesarias, en uso de las facultades que me son conferidas á nombre de la nacion Mejicana he venido por decreto de este dia la concederle la espresada suerte del tierra, declarandole la propiedad de ello por los presentes letras, del conformidad con la ley de 18 de Agosto de 1824, y reglamentos de 21 de Noviembre de 1828, y bajo las condiciones siguientes:

52 1o. La tierra de que se de hace donacion es de 400 varas en cuadro poco mas ó meños, estencion, Podra cercalo sin perjudicar las travesias, caminos y servidumbres, lo desfrutara libre y exclusivamente destinandala al uso y utilidad que mas le acomode; pero el tendra cultivada para impedir el denuncio.

2o. No perjudicara en manera alguna á los indigenas de la Mision de Sta. Barbara, que estan radicados á sé radicaren en las Sienequitas en el libre aprovechamiento del agua para el riego de sus siembras y huertos y demas usos que de ella puedan hacer.

3o. Solicitara del Juez respectivo le dé posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos con las majoneras necessarios.

En consecuencia mando que temendose el presente titulo por firme y Valedero se tome rason de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de los Angeles, en este papel comun por falta del sellado que corresponde á diez de Octubre de mil ochocientos cuarenta y cinco.

Queda tomada razon de este titulo en el libro à que corresponde.

53 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, by virtue of the power vested in me by law, do certify hereby that the six preceding and hereunto annexed pages of tracing paper, numbered from one to six inclusive, exhibit a true and accurate copy of a document denominated "(1845) Espediente Promovido Por Dn. Anastacio Carrillo en pretencion de 400 varas de tierra en el parage de las Sienequitas," now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be applied, at the city of [SEAL.] San Francisco, this nineteenth day of October, 1855.

JOHN C. HAYS,
U. S. surveyor general for California.

Filed Dec. 28th, 1855.

C. E. CARR, *Clk.*

[Translation.]

55 1845.

Espediente moved by Don Anastacio Carrillo in application for 400 varas of land in the place of Las Cienequitas. [475.]

ANGELES, *Sept. 20th*, 1845. The committee on missions will report. PICO.

MOST EXCELLENT SENOR: Anastacio Carrillo, retired ensign of the company of Santa Barbara, before the justification of your excellency, in legal and *and* proper manner, appears and says:

That there being a piece (suerte) of land, unoccupied, of about 400 varas, a little more or less, in the place known by the name of "La Cienequita," there having died the owner, who obtained it with the permission of the late commandant general and political chief, Don Jose Figueroa, since the year (1834,) when the missions were secularized, of which land this petitioner gave possession to various Indians in equal terms, he being then administrator of the mission near by of the same name, and which now they exclusively occupy, the undersigned asks your excellency to be so good as to grant him the varas of said land for the sole purpose of making annually a small butchering, (matanzas,) and if he can, a garden for planting trees and fruit of the season. Wherefore, he duly prays your excellency
56 to grant him the lot (solar) indicated, as he has the consent of the heirs, and of the majority of the *neofites* which exist there, and do not belong to town or corporation; pardoning this petition on common paper, there being none of the corresponding stamp in this place.

Santa Barbara, September 14th, 1845.

ANASTACIO CARRILLO.

MOST EXCELLENT SENOR: The commission on missions have the honor to inform your excellency that, in their opinion, the government can give to the petitioner the small piece of land which he asks for, under the condition that he will not interfere with the use of the waters by the Indians who sow in the Cienequitas.

Angeles, September 25th, 1845.

ANDRES PICO.
JUAN MANCO.

ANGELES, *October 10th*, 1845.

The land asked for is granted. Let the respective title be made out.

Pio Pico, señor member of the departmental assembly, and provisional governor of the Californias by virtue of the constitution:

Whereas Don Anastacio Carrillo has asked, for his own personal benefit and that of his family, a lot of land in Los Cienequitas,
57 next to the mission of Santa Barbara, which formerly the deceased F. Indian of said mission occupied; the necessary examinations being previously made, using the powers conferred on me in the name of the Mexican nation, by decree of this day I have granted to him the said lot of land, declaring to him the ownership of it by

these present letters, in conformity with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, and under the following conditions:

1st. The land which is granted is in extent 400 varas square; he may enclose it without prejudice to the crossings, roads, and easements, enjoy it fully and exclusively, making such use of it as may best suit him; but he will have it cultivated in order to prevent denouncement.

2d. He will not prejudice, in any manner, the Indians of the mission of Santa Barbara, who are or who may be established in the Sienequitas, in the free use of the water for irrigating their sowings and gardens, and other uses which they may make of it.

3d. He will ask the respective magistrate to give him the juridical possession in virtue of this despatch, by whom the boundaries shall be marked out with the necessary bounds.

Wherefore, I order that the present title, being held as firm and valid, note be taken of it in the respective book, and that it be delivered to the party interested for his security and other ends.

58 Given in the city of Los Angeles, on this common paper for want of that of the proper stamp, this 10th day of October, 1845.

Note is taken of this title in the corresponding book.

Filed Dec. 28th, 1855.

C. E. CARR, *Clk.*

Submission of cause.

59 United States district court, southern district of California.—Special term, September 10, 1855.

LOS ANGELES, *December 28th*, 1855.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20.

On this day this case was called, and espediente and translation of same was filed and introduced in evidence by attorney for appellee; upon which, and upon the transcript and papers on file, it appearing that the notice of appeal has been duly filed, the case having been argued by counsel of the respective parties, was submitted for final adjudication.

Judgment.

United States district court, southern district of California.—December term, A. D. 1855.

LOS ANGELES, *March* 6, 1856.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20.

In this case the opinion of the court was delivered rejecting the

claim, and a decee in accordance therewith was ordered to be entered upon the records of this court.

Motion and affidavit for a new trial.

60 ANASTACIO CARRILLO, appellee,
ads.
THE UNITED STATES, appellant. } No. 20.

The claimant moves for a new trial in the above entitled cause, for the purpose of introducing new and further evidence, particularly with reference to the identity or capability of segregation of the land granted, and in support of his said motion refers to the annexed affidavit of Frederick Billings.

By his attorneys: HALLECK, PEACHY & BILLINGS.

And he further asks, for the purpose aforesaid, that the cause be continued until the next term of this court.

By his attorneys: HALLECK, PEACHY & BILLINGS.

District court, district of California, U. S. A.

ANASTACIO CARRILLO, appellee,
vs.
THE UNITED STATES, appellant.

Frederick Billings, on oath says, that in the above entitled cause the juridical possession, given after the change of sovereignty
61 of California, was considered to at least have the effect to show the identity and capability of segregation of the land granted; and that for that reason evidence, other than that contained in said juridical possession of the identity of the land granted, was not introduced; that such other evidence exists, and if a new trial is granted, can be introduced, making good the claim of the claimant, and showing clearly that a distinct and particular piece of land was granted; which distinct and particular piece of land has ever since the grant been occupied by the claimant, and is the identical land for which a confirmation is asked.

FREDERICK BILLINGS.

Subscribed and sworn to the 7th day of February, A. D. 1856, before me. C. E. CARR, *Clerk.*

Filed March 7, 1856. C. E. CARR, *Clerk.*
By O. MORGAN, *Deputy.*

Order granting new trial.

62 Whereupon the following proceedings were had in open court, to wit:

U. S. district court, southern district of California.—December term, A. D. 1855.

LOS ANGELES, *March* 7, 1856.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20.

On motion of counsel for appellee, ordered that a new trial be granted in the above entitled cause.

Deposition of Rodriguez.

63 Deposition of Antonio Rodriguez, a witness on the part of the appellee, taken before C. Sims, United States commissioner for the district of California, at the United States district clerk's office for the southern district of California, in the city of Los Angeles, on Saturday the 10th day of January, A. D. 1857, at 2 o'clock, p. m., by consent and agreement of the respective attorneys of the parties, to be used as testimony on behalf of the claimant and appellee in a certain cause now pending in the United States district court for the southern district of California, being case No. 20 on the docket of said court, wherein Anastacio Carrillo is claimant and appellee, and the United States are appellants.

Present: P. Ord, U. S. attorney, on behalf the United States; and Halleck, Peachy, and Billings, esqrs., attorneys on behalf of claimant and appellee.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20. "Las Cienequitas."

Antonio Rodriguez, being duly sworn on the part of appellee, deposes and answers as follows:

Question. What is your name, age, and place of residence?

Answer. My name is Antonio Rodriguez; am 49 years of age,
64 and reside in the county of Santa Barbara.

Question. Do you know the tract of land claimed in this case by Anastacio Carrillo, called "Las Cienequitas, or suerte en las Cienequitas;" if yea, how long have you known it, and where is it situated?

Answer. I know the tract of land, and have known the same ever since it was conceded by the government to Anastacio Carrillo, in 1845, by Pio Pico. It is on the north side of the main road that goes from Santa Barbara to Santa Ynez, and distant from Santa Barbara less than two leagues.

Question. Do you know the garden or huerta of "Benidito," the Indian?

Answer. I know both the garden and the man well.

Question. Where is this garden of the Indian situated with reference to the lands claimed in this case?

Answer. Going in the direction of Santa Ynez it is on the right hand, a little to the north of and some short distance from the lands claimed in this case.

Question. Is this garden of the Indian a well known locality?

Answer. It is well known.

Question. Had the Indian a fence about his garden?

Answer. Yes, the Indian's garden is fenced, and has always been cultivated.

65 Question. Is the "Las Cienequitas" well known?

Answer. It is a locality well known.

Question. Does Anastacio Carrillo live on this tract of land claimed by him; if yea, how long has he lived upon it, and in what manner has he occupied it?

Answer. He does not reside, but he has his corral on it, where he slaughters his cattle every year, and lives there during the slaughtering time of the year, and during that time he erects a temporary house; he has always had a corral on it.

Cross-examination by U. S. attorney.

Question. Where does Anastacio Carrillo, the claimant in this case, live?

Answer. In Santa Barbara; has lived there ever since I was born.

Question. Have you any interest in this case?

Answer. I have not.

ANTONIO RODRIGUEZ.

Sworn to and subscribed before me this 10th day of January, A. D. 1857. C. SIMS, *U. S. com'r.*

66 UNITED STATES OF AMERICA,
Southern district of the State of California, ss:

I, C. Sims, United States commissioner for the district of California, do hereby certify that the foregoing deposition of Antonio Rodriguez was taken before me in accordance with the request and agreement of the said attorneys at the United States district clerk's office in the city of Los Angeles, State of California; that the said Antonio Rodriguez was by me duly sworn according to law as a witness in said cause in the caption of this deposition mentioned, and after being so sworn his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, and by him corrected as he desired, was by him signed in my presence.

In testimony whereof I hereunto set my hand and affix my seal this 10th day of January, A. D. 1857.

C. SIMS, *U. S. com'r.*

Filed this 10th January, 1857.

C. SIMS, *Clerk.*
Pr. J. H. COLEMAN, *Dept'y.*

67 *Submission of cause.*

Whereupon the following proceedings were had in open court, to wit:

U. S. dist. court, southern dist. of Cal'a.—December term, A. D. 1856.

LOS ANGELES, *January* 12, 1857.

ANASTACIO CARRILLO, app'ee, *ads.* THE UNITED STATES, applt. } No. 20. "Las Cienequitas."

Now, on this day, come the parties by their atty's, the appellants by P. Ord, esq., U. S. att'y, and the appellee by Halleck, Peachy, & Billings, esqrs., his attorneys, and after argument of counsel aforesaid, the same is submitted to the court for final adjudication, and taken under advisement.

Judgment.

U. S. dist. court, south'n dist. Cal'a.—December term, 1856.

LOS ANGELES, *January* 14, 1857.

ANASTACIO CARRILLO, app'ee, *ads.* THE UNITED STATES, applt. } No. 20. "Las Cienequitas."

Now, on this day, come the parties aforesaid, by their attorneys aforesaid, whereupon the court delivered its opinion confirming the claim of the appellant, and a decree was ordered to be entered up in conformity to said opinion, which is accordingly done.

68 In the district court of the United States within and for the southern district of California.

Hon. Isaac S. K. Ogier, judge.

DECEMBER TERM, 1856.

THE UNITED STATES, appellant, *vs.* ANASTACIO CARRILLO, appellees. } No. 20.

Transcript from the board of land commissioners. (328.)

This cause coming on to be heard, on appeal from the decision of the board of land commissioners to settle private land claims in California, upon the transcript of the proceedings and decision of said board, and the documentary and other evidence upon which said

decision was founded, and upon other evidence taken and filed in this court, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board of land commissioners confirming unto the above named appellee, Anastacio Carrillo, the land described and set forth in his petition to the said board of land commissioners, and in the documentary and other evidence taken in this case be, and the same is hereby, affirmed, and that the title of the said Anastacio Carrillo to the said land is a good and valid one.

69 The land, of which confirmation is hereby made, is situated in the county of Santa Barbara, and is known by the name of "Las Cienequitas," or "suerte de las Cienequitas," or "El parge de la Cienequitas," being the same which was granted to said Anastacio Carrillo by Gov. Pio Pico, on the tenth day of October, 1845, is in quantity equal to the amount of four hundred varas square, and no more, and has the location and boundaries described in the map, grant, and documents of title, reference being had to the measurements of juridical possession in aid of such description.

ISAAC S. K. OGIER,
Judge for the S. dist. of Cal'a.

Filed January 14, 1857.

C. SIMS, *Cl'k.*

70 Whereupon the following proceedings were had in open court, to wit:

U. S. dist. court, south'n dist. Cal'a.—December term, 1857.

LOS ANGELES, *March* 15, 1858.

ANASTACIO CARRILLO, app'ee, *ads.* THE UNITED STATES, applt. } No. 20.

On motion of E. J. C. Kewen, acting U. S. dist. att'y, for leave to take an appeal in this case, the same is taken under advisement.

U. S. dist. court, south. dist. Cal'a.—December term, 1858.

LOS ANGELES, *Dec.* 7, 1858.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20.

Now, on this day, comes J. R. Gitchell and moves the court to withdraw the motion heretofore entered and filed to appeal this case; which motion being heard by the court is granted, and the said motion heretofore filed is, and the same is hereby, withdrawn.

71 United States court for the southern district of California.—December term, A. D. 1861.

LOS ANGELES, *December* 6, 1861.

ANASTACIO CARRILLO, appellee, *ads.* THE UNITED STATES, appellant. } No. 20.

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the United States, (there being no U. S. dist. att'y present,) and moves the court that an appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from *from* the order and decree of this court heretofore rendered; which motion being heard, and by the court understood, is granted.

72 United States district court, southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing pages, numbered from 1 to 71, both inclusive, to contain a full and correct transcript of the record of the proceedings and of the decision of said court, and the papers and evidence on which said decision was founded, on file in my office in case No. 20 on the docket of said court, wherein Anastacio Carrillo is the claimant against the United States for the place named "Cienequitas."

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, this the 29th day of December, A. D. 1861, at the city of Los Angeles.

JOHN O. WHEELER, *Clk.*

1005

SUPREME COURT OF THE UNITED STATES.

No. 126.

THE UNITED STATES
vs.
ANASTACIO CARRILLO.
} December Term, 1863.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

In this case the United States make no objection to the validity or to a confirmation of this grant. The grant appears in the Toma de Razon, for the year 1845, No. 299, and also in Hartnell's index, No. 475. The expediente from the archives, also, fully authenticates the grant, and the evidence shows that the conditions of the grant have been substantially complied with by the grantee.

The only valid objections to be made by the United States in this case are, 1st, to the validity of the juridical measurement and possession of the land granted, made August 6, 1849, after the cession of California to the United States, (Printed Record, pp. 7–8;) 2d, to the quantity and form of the survey; and, 3d, to the decree of confirmation by the United States district court, which is erroneous, so far as it may be regarded as confirming the grant according to the lines of that survey and measurement, both as to quantity and form. (See ib., p. 28.)

I. The survey made and the juridical possession given August 6, 1849, are inoperative and void, as against the United States, because made *after* the cession of California.

In the case of *Frémont* vs. *The United States*, this court, in speaking on this subject, says: "*The alcalde had no right to survey the land or deliver judicial possession* except by the permission of the American authorities. *He could do nothing that would in any degree affect the rights of the United States to the public property.*" (Ch. J. Taney, 17 Howard's U. S. R., p. 563.)

In the case of *Fuentes vs. The United States*, in speaking of a grant for land in California, not delivered until after the cession of California to the United States, this court says: "*A delivery after the latter event*, by a former governor of California, *would not give a grantee a right to claim the land by any obligation imposed upon the United States by the treaty of Guadalupe Hidalgo.*" (Wayne, J., 22 Howard's U. S. R., p. 458.)

The act of August 6, 1849, was, therefore, inoperative and void, so far as it undertook to define the rights of the grantee, according to the lines of that survey.

II. By the terms of the grant the land of which donation was made is of the extent of 400 varas in a *square* form, a little more or less.

1st. *The quantity of the grant.*

The original Spanish is "cuatrocientos varas *en cuadro*," that is, "400 superficial varas, in the form of a square." (Printed Record, p. 3, fol. 8, 1°.) It means literally a square, each of whose sides is 20 varas long; $20 \times 20 = 400$ square varas. The distinction between the signification of "400 *square varas*," and "400 *varas square*," is one which is peculiar to the English language, depending on the *position* of the words, and is known only to those who have an accurate and critical knowledge of our language. In the translation made by Mr. Fisher, the secretary of the land board, (who was a *foreigner*,) this distinction has been entirely overlooked, and he has translated the words "cuatrocientos varas *en cuadros*" as "400 varas *square*;" that is, a square each of whose sides is 400 varas long, making 160,000 square varas of superficial contents.

The meaning of a phrase analogous to the one in question was thoroughly examined in the case of the United States *vs.* Miranda, No. 44, January term, 1842. One of the questions in that case was in regard to the meaning of the phrase "ocho leguas *en cuadro*"—whether it meant *eight square* leagues or *eight leagues square;* that is, *sixty-four* leagues of surface.

Our consul at Havana, Mr. N. P. Trist, a number of professors of the Spanish language, and three Cuban surveyors, were examined, all of whom sustained the view here taken of the meaning of the phrase, viz: that it means eight square leagues; that is, eight leagues of surface, in a square form. (See Printed Record of that case, among the files of this court, vol. 1, of January term, 1842. Testimony of N. P. Trist, written pages 146, 148; Fontane, ib., p. 50; Merino, ib., 158, '60; Cuban surveyors, Pouble, ib., pp. 151, 152, 153; Lobo, ib., pp. 154, 155; Oliva, ib., 156.)

It is clear, therefore, that the translation in this case is a *mistake*, and that the grantee is entitled only to 400 *square* varas—that is, *to a square*, each side of which is 20 varas long—20×20 varas $= 400$ varas of suface.

It may be objected that this interpretation reduces the quantity of the grant so much as to create rational doubts as to the correctness of this interpretation. But apart from the meaning of the language used, the size of the grant may be judged, in some degree, by reference to the purpose of the grant, as stated by the petitioner. He says: "The undersigned asks your excellency to be so good as to grant him the varas of said land for the *sole purpose of making annually a small butchering* (matanzas,) *and if he can, a garden for planting trees and fruit of the season.* Wherefore, he duly prays your excellency to grant him *the lot (solar) indicated*," &c. (Printed Record, p. 22, fols. 55, 56.) A lot 20 varas by 20 varas—that is, 60 feet by 60 feet., although small, yet is sufficiently large for "making annually a *small butchering* and *a garden* for planting trees and fruits of the season."

Another theory as to the quantity of the grant intended may be suggested, viz: that it was intended to grant a lot equal in extent to 4 100-vara lots, in the form of a square; that is, a square each side of which would be 200 varas long,

which will make that quantity. This theory, although more liberal towards the grantee, is purely *conjectural*. It will be for the court to decide between these two views. But the claim, that each side of the square must be 400 varas long, is wholly inadmissible.

2d. *The form of the survey.*

That is determined by the language of the grant, "en cuadro." Apart from this, the law of Mexico required grants to be surveyed in the form of a *square or parallelogram*, as near as might be. The law on that subject and the reasons for preferring those forms, resting on grounds of public policy and convenience with reference to the adjacent residuum, have already been fully presented to this court, in the argument in the case of *Fossatt* vs. *The United States*, to which we would now beg leave to refer. (Arg., p. 72; pp. 82, 83.)

The land in this case, as appears by the grant and survey, lies along a public road. There is no reason, therefore, why the line of that road being taken as a base, it should not be surveyed in the form of a *square*. No reason can be given for the ridiculous form of the survey, even under the erroneous ideas as to its quantity, except a desire to cull out and to include in the grant all the good land on the one side, and to exclude from it all the bad land on the other. This cannot be allowed. The survey must be in *a square form.*

III. The decree of the district court is erroneous, both as to the *quantity* and to the form of the grant, so far as it may be regarded as directing *the form* of the survey, according to the juridical measurement.

The language of the decree is in these words: "The land of which confirmation is made, &c., is, *in quantity, equal to the amount of* 400 *varas square*, and no more, *and has the location and boundaries described in the map*, grant, and documents of title, *reference being had to the measurements of juridical possession*, in aid of such description." (Printed Record, p. 28.) *The only map* in the case is that accompanying the act of juridical possession, and is therefore directly called for as defining the location and boundaries of the grant.

The decree, therefore, must be set aside and a new decree entered for 400 *square varas*, (or for 4 100-vara lots, if the court should think that more reasonable,) *to be surveyed in the form of a square*, in the locality indicated by the act of juridical possession.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.